

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

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COMMENTS OF HI-RIM COMMUNICATIONS, INC.

I. INTRODUCTION

Hi-Rim Communications, Inc. ("Hi-Rim"),^{1/} a reseller of long distance services, by its undersigned attorneys, hereby submits its comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the above-captioned docket. Hi-Rim supports the Commission's effort to ensure that interexchange carriers provide their customers with clear and unambiguous information in the Letters of Authorization ("LOAs"). Hi-Rim recommends that the Commission establish a standard of clarity to be adhered to by all IXC's, such as that contained in Section (d) of the proposed rules,^{2/} without either mandating or prohibiting particular methods of marketing to customers.

^{1/} Hi-Rim is a corporation organized under the laws of Nevada. Hi-Rim is a wholly owned subsidiary of Teletek, Inc., a publicly traded Nevada corporation engaged in the public payphone and long distance business.

^{2/} § 64.1150(d).

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The Commission could inadvertently eliminate some of the most effective and reasonable marketing techniques available to IXC's if it adopts certain proposed rules, such as the proposed requirements that an LOA be contained on a separate document and the requirement that an LOA not be on the same page as an inducement. Hi-Rim believes that the Commission can achieve its essential purpose of eliminating potentially deceptive and confusing IXC marketing, without unnecessarily narrowing the marketing alternatives available to IXC's. More streamlined rules would therefore be in the public interest. Hi-Rim also urges the Commission to clarify that it intends to preempt any state regulations implementing inconsistent PIC change rules.

II. THE COMMISSION'S PROPOSED RULES ARE OVERBROAD AND WILL ELIMINATE REASONABLE AND EFFECTIVE MARKETING PRACTICES

The Commission's proposed rules are overbroad because they encompass many reasonable and unambiguous marketing practices. Accordingly, the Commission should not adopt rules that would limit competition in the IXC marketplace. The Commission, by adopting alternative verification procedures for telemarketers, has recognized that IXC's require flexibility and the opportunity to utilize a variety of approaches to communicate with customers. The Commission also recognized in its NPRM that inducements may be "proper and effective marketing devices for attracting customers to an IXC's service."^{3/} The Commission should therefore craft rules for unauthorized PIC changes that do not disrupt valuable and effective IXC marketing practices. The Commission can accomplish this goal by preserving the general requirement of Section (d) of the proposed rules which requires

^{3/} NPRM ¶ 12.

that LOAs be "clear and unambiguous." In addition, the prohibition in Section (e) against "negative option" LOAs, requiring affirmative action to maintain the same carrier, that focuses only on deceptive LOAs, also is reasonable.

Those sections of the proposed rules that would also affect reasonable and unambiguous marketing inducements should not be included in the final rules. The proposed rules in Sections (b) and (c)^{4/} would require that LOAs be included on a separate document, and would prohibit inducements from being included on the same page as an LOA. These requirements are not adequately focused on eliminating deceptive practices, and will therefore interfere with many effective IXC marketing practices. Postcards containing an LOA and even a simple inducement would not be permitted, and even something as simple as letterhead on an LOA might also be prohibited. These rules will certainly increase costs to IXCs, by requiring that IXCs send additional documents to each customer.

IXCs are already motivated by the traditional incentives of a competitive marketplace to avoid practices such as unauthorized PIC changes that drive away potential customers, disrupt a provider's business, and damage its business reputation. These incentives, combined with a general standard of clarity and content, such as that contained in Section (d) of the proposed rules, should be sufficient to discourage deceptive practices. The Commission need not bring about these anticompetitive effects in order to achieve its purpose of eliminating misleading marketing. The proposed rules should therefore be streamlined accordingly.

^{4/} §§ 64.1150(b) and (c).

III. THE COMMISSION SHOULD NOT CONSIDER ADDITIONAL REQUIREMENTS THAT WOULD LIMIT MARKETING METHODS AVAILABLE TO IXCS

The Commission requests comment on a number of potential rules that would create further restrictions on the marketing practices available to IXCs. Hi-Rim opposes such additional constraints that will limit IXC marketing options. Such constraints will not be in the public interest, because they will not further the Commission's goal of eliminating unauthorized PIC changes. The proposed rules already contain an enforceable standard of clarity and content that will lead to fewer unauthorized PIC changes.

The Commission has requested comment on the possibility of mandating standard type size, titles, and even standard language to be used in LOAs. Standard language could lead to customer confusion if it proves to be too formal, or does not make sense in the context of IXC marketing material. Because IXCs are already required to include relatively specific information in their LOAs, there appears to be no added public interest benefit to requiring specific wording. Moreover, standard wording, type size, or titles would eliminate opportunities for innovative marketing that permits IXCs to distinguish themselves in the marketplace. As long as an LOA is clear and unambiguous, the precise details of the LOA should be irrelevant.

The Commission has also asked for comments on whether business and residential customers should be subject to different rules. Business and residential customers should not be treated differently under the rules. There is no showing that customers have different perceptions of an LOA based on the type service they receive. In some instances, business and residential service may be similar or identical. Since most smaller IXCs do not

distinguish between business and residential customers for marketing purposes, such a rule certainly would increase costs for these IXC's.

The Commission, although recognizing that inducements are a useful marketing tool for IXC's, also requested comment on the elimination of inducements altogether.

Inducements, such as rebates, sales, and discounts, are a widespread practice in every industry in the United States, and a common means of attracting new customers. The Commission should not seriously consider eliminating inducements at this time. The Commission's suggestion that inducements be mailed separately is also unnecessary at this point: such a requirement could cause logistical problems for IXC's and could increase marketing costs, an unreasonable and onerous burden for small- and medium-sized IXC's.

Hi-Rim supports the Commission's efforts to eliminate deceptive marketing. Reducing misleading inducements will accrue to the benefit of all IXC's by increasing the integrity and reputation of the industry as a whole. However, this goal can be accomplished by enforcing the proposed "clear and unambiguous" standard and requiring minimum content in LOAs. This approach should be implemented and the results observed before additional, more severe restrictions are imposed that would create excessive costs and restrictions on IXC's.

IV. THE COMMISSION SHOULD USE THIS OPPORTUNITY TO CREATE A NATIONWIDE UNIFORM STANDARD FOR PIC CHANGE REQUIREMENTS

Hi-Rim urges the Commission to preempt inconsistent state PIC change requirements with its own rules. While state regulation in this area is currently limited, several states are moving definitively to establish such regulations. For example, the state of Florida has

recently proposed rules that would require specific language in LOAs.^{5/} If states are allowed continue this process, IXCs will be confronted by myriad conflicting regulatory requirements. Rather than developing nationwide marketing campaigns, IXCs will be forced to incur costs to develop marketing on a state-by-state basis. These increased costs will likely be passed on to consumers.

As a practical matter, most consumers use their telephone service on an integrated basis for both interstate and intrastate calls. Subjecting consumers and carriers to separate sign-up procedures, based on the type of service, is burdensome and unreasonable. The Commission therefore must establish the primacy of its regulations over inconsistent state rules. Preemption of State regulation of PIC changes is consistent with the Commission's mandate to adopt rules that permit provision of efficient communications services at reasonable prices.^{6/} The Commission should preempt any inconsistent state regulation of PIC changes. The Commission's preemption of conflicting state law is supported by applicable law.^{7/} Such action is also in the public interest, as such a clarification would

^{5/} See *Proposed Rule Revisions to Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 941190-TI, Notice of Rulemaking (December 15, 1994).

^{6/} Case law supports the Commission's finding that "requiring the customer to retain two redundant facilities or invest in expensive additional equipment" frustrates the Commission's responsibilities to assure a "rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges." *California v. FCC*, 567 F.2d 84, 85 (1987), *quoting* 47 U.S.C. § 151.

^{7/} Regulations effecting PIC changes are not severable into interstate and intrastate components because the authority granted to switch the customer's IXC affects the customers choice for both types of service. See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986) where the Supreme Court distinguished those cases in which interstate and intrastate components were separable on a jurisdictional basis from those cases in which interstate and intrastate components were not severable. See *North Carolina Utilities*
(continued...)

specify that only the Commission's rules apply to LOAs and thereby reduce customer confusion.

V. CONCLUSION

The Commission's proposed rules include constructive solutions that will achieve the Commission's goal of reducing unauthorized PIC changes. However, the Commission should adopt only Section (d) of the proposed rules, requiring certain content in LOAs and requiring "clear and unambiguous" LOAs, and the requirement in Section (e) that "negative option" LOAs be eliminated. These rules will reduce deceptive marketing practices without increasing costs or significantly hampering innovative competition. Additional restrictions that would require that LOAs be written on a separate document, restrict the use of inducements, or mandate the detail of LOAs should not be considered at this time. These requirements will increase costs to the detriment of the competitive IXCs, especially smaller companies, and will reduce marketing innovation, thereby limiting competition in the IXC marketplace. The Commission should clearly state its intention to preempt contrary state laws in this area.

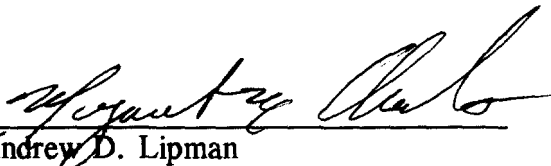
²¹(...continued)

Comm'n v. FCC, 537 F.2d 787 (4th Cir.), *cert. denied* 552 U.S. 1027 (1976), and *North Carolina Utilities Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

WHEREFORE, Hi-Rim Communications, Inc. respectfully submits these comments
on the Commission's proposed rules on PIC changes.

Respectfully submitted,

HI-RIM COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Andrew D. Lipman", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 1995,
copies of the foregoing document were served by hand delivery on
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